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8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. **2010-350**

14 **ROY ARTHUR BURTON**
15 **P O Box 1663**
Oakhurst, CA 93644

A C C U S A T I O N

16 **Registered Nurse License No. 498361**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 **License History**

25 2. On or about March 31, 1994, the Board of Registered Nursing issued Registered
26 Nurse License Number 498361 to Roy Arthur Burton ("Respondent"). The license was in full
27 force and effect at all times relevant to the charges brought herein and will expire on
28 February 28, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code"), unless otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

8. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section,
5 in which event the record of the conviction is conclusive evidence thereof.

6 COST RECOVERY

7 9. Code section 125.3 provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 FIRST CAUSE FOR DISCIPLINE

12 (Criminal Convictions)

13 10. Respondent is subject to disciplinary action under Code section 2761, subdivision (f),
14 in that Respondent has been convicted of crimes substantially related to the qualifications,
15 functions, and duties of a registered nurse, as follows:

16 a. On or about June 18, 2009, in the Superior Court of California, County of Madera, in
17 the case entitled, *People of the State of California v. Roy Arthur Burton* (Super Ct. Madera
18 County, 2009, Case No. SCR009305), Respondent was convicted on his plea of no contest of
19 violating Vehicle Code sections 23152, subdivision (b) (Drive While Having .08% Blood Alcohol
20 Content, and More [.13%] with a Prior 12/29/2000) and 14601.1, subdivision (a) (Drive with a
21 Suspended or Revoked License), both misdemeanors.

22 The circumstances of the conviction are that on or about February 26, 2008, a California
23 Highway Patrol officer observed Respondent driving at a high rate of speed on SR 41. After
24 stopping the vehicle, the officer requested Respondent's driver's license, which he did not
25 possess. The officer observed Respondent's eyes to be red and watery, his speech was slurred,
26 and the officer detected a strong odor of alcohol emitting from Respondent. After conducting the
27 field sobriety tests, the officer determined Respondent to be under the influence of alcoholic
28 beverages and was placed under arrest.

b. On or about December 29, 2000, in the Superior Court of California, County of
Madera, in the case entitled, *People of the State of California v. Roy Arthur Burton* (Super Ct.

1 Madera County, 2000, Case No. SCR00906617), Respondent was convicted on his plea of no
2 contest of violating Vehicle Code sections 23152, subdivision (b) ((Drive While Having .08%
3 Blood Alcohol Content or More), a misdemeanor.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Criminal Convictions Involving the Consumption of Alcohol Beverages)**

6 11. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
7 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c), in
8 that Respondent was convicted of crimes involving the consumption of alcoholic beverages
9 and/or drugs, as set forth in paragraph 10, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Use Alcoholic Beverages and/or Drugs to the Extent or**
12 **in a Manner Dangerous or Injurious to Himself or Others)**

13 12. Respondent is subject to disciplinary action under Code section 2762, subdivision (a),
14 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in
15 that Respondent consumed alcoholic beverages and/or used drugs to an extent or in a manner
16 dangerous or injurious to himself or others, as set forth paragraph 10, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 498361, issued to Roy Arthur Burton;
2. Ordering Roy Arthur Burton to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/25/10

for

Stacie Bernier
LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant